

October 7, 2013

BY ELECTRONIC MAIL AND HAND DELIVERY

Honorable Katherine B. Forrest
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, New York 10007-1312
ForrestNYSDChambers@nysd.uscourts.gov

Re: *Starwood Hotels & Resorts Worldwide, Inc., et al. v.*
PM Hotel Assocs., L.P., et al., Case No. 13 Civ. 38 (KBF) (JLC)

Dear Judge Forrest:

Defendants PM Hotel Associates, L.P. and Parker Palm Springs LLC (together, “Parker”) and plaintiffs Starwood Hotels & Resorts Worldwide, Inc., Starwood (M) International, Inc., and Preferred Guest, Inc. (collectively, “Starwood,” and together with Parker, the “Parties”) submit this joint letter to update the Court as to the Parties’ ability to comply with the Court’s Scheduling Order of May 1, 2013¹ given the progress of discovery, as ordered by Your Honor on September 11, 2013.

The Parties agree to and respectfully request that Your Honor so-order the following proposed revised fact and expert discovery schedule, which the Parties believe is necessary to complete discovery.

Deadline	May 1, 2013 Scheduling Order	[Proposed] Revised Discovery Schedule
Close of fact discovery	October 25, 2013	November 15, 2013
Affirmative Expert Reports		November 12, 2013
Rebuttal Expert Reports		December 12, 2013
Close of expert discovery	November 22, 2013	December 20, 2013

The Parties do not agree on the dates for adjournment of the current summary judgment briefing schedule or on whether the trial date should be adjourned.

Parker’s Proposal:

Parker is prepared to abide by the current trial date, but proposes a slightly adjusted summary judgment briefing schedule to be completed before January 16, 2014, as Your Honor directed at the conference held September 10, 2013. On July 31, 2013, Your Honor denied

¹ As amended pursuant to the Court’s May 13, 2013 so-ordered endorsed letter.

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Parker's July 26, 2013 request to adjourn the trial date and schedule a status conference in late October to revisit the issue, ordering that "the trial date shall remain in place and the parties shall prepare accordingly." (July 31, 2013 Order.) To date, Parker has produced over 130,000 documents compared to the 1,960 documents produced by Starwood. Consequently, Parker respectfully requests that Your Honor so-order the revised summary judgment briefing schedule set forth below.

Deadline	May 1, 2013 Scheduling Order	[Parker's Proposed] Pre-Trial Schedule
Opening summary judgment	November 22, 2013	November 26, 2013
Opp'n summary judgment	December 23, 2013	December 30, 2013
Reply summary judgment	January 13, 2014	January 15, 2014
Start of one week trial	February 10, 2014	February 10, 2014

Parker does not believe that a 30-day extension of the summary judgment or trial schedule is necessary because, among other things, Starwood always has had access to the hotels' property management system ("Opera") data and at Starwood's request, on August 19, 2013, Parker produced to Starwood guest reservation and occupancy data from Opera used by Parker's consulting expert, FTI.² As a result, it would not be unduly burdensome to maintain a schedule that requires the parties to work on expert discovery and summary judgment briefing simultaneously.

Starwood's Proposal:

The parties agree that the dates for the close of fact discovery and expert discovery should be adjourned to accommodate the completion of document production, depositions of fact witnesses and expert disclosure in this matter. Starwood has taken or scheduled 14 depositions and noticed a deposition of FTI,³ and Parker has taken or scheduled 12 depositions and taken 3 "other hotel witness" depositions. A deposition is scheduled on almost every day from October 16 through November 15. Parker has produced 40 gigabytes of data regarding guest reservations and over 880,000 pages of documents that must be analyzed by Starwood and its expert witnesses for use on any summary judgment motion. The parties also continue to produce documents in this matter on a rolling basis, with Parker producing tens of thousands of pages of material on a weekly basis.

The parties disagree regarding whether the summary judgment briefing schedule and the trial date should be adjourned. Starwood respectfully requests an approximately 30 day adjournment of the remaining dates set forth in the Court's Pre-Trial Scheduling Order. Starwood's proposed schedule would allow fact discovery and expert discovery to be completed

² Starwood maintains that it does not have access necessary to perform analysis for expert reports and was unable to use the data provided on August 19, 2013. As a result, on September 26, 2013, Parker also produced backup Opera files that Starwood requested.

³ Parker opposes discovery from FTI.

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before summary judgment briefs are filed. Starwood's proposed schedule tracks the Court's original schedule, which provided that expert discovery would not overlap with the summary judgment schedule. Starwood believes that briefing summary judgment motions during expert discovery prevents Starwood from having a full and fair opportunity to rely on the expert discovery and analysis to support its motion. Starwood expects that expert discovery will help identify the days when misreporting of occupancy occurred. Additionally, it has become evident that the misreporting of occupancy from 2008 through at least the beginning of 2012, involving numerous past and present employees, tens of thousands of records and two hotels, will require more than the five days currently scheduled for a jury trial. Starwood believes that the jury trial should be scheduled for two weeks.

Deadline	May 1, 2013 Scheduling Order	[Starwood's Proposed] Pre-Trial Schedule
Opening summary judgment	November 22, 2013	December 23, 2013
Opp'n summary judgment	December 23, 2013	January 23, 2014
Reply summary judgment	January 13, 2014	February 13, 2014
Start of two week trial	February 10, 2014	March 10, 2014

The Parties thank Your Honor for Your time and attention to this matter, and are available to discuss the foregoing at Your Honor's convenience.

Respectfully,

Daniel J. Fetterman /CTB

Daniel J. Fetterman
 Counsel for Parker

Noah M. Weissman /CTB

Noah M. Weissman
 Counsel for Starwood

cc: Counsel of Record (*via electronic mail*) (*with enclosures*)